

- (1) On November 25, 1997, the claimant, Jeffrey S. Kelley, injured himself when he fell from a ladder while installing a storm window during a painting project he was performing for Neil Goss.
- (2) Mr. Kelley began painting for Mr. Goss approximately two weeks before the accident. Mr. Goss furnished the supplies and ladder, paid Mr. Kelley \$14 per hour, and

retained the right to terminate him. Mr. Kelley used his own paint brush and drop cloth. Mr. Goss directed Mr. Kelley in the manner the house was to be painted.

(3) Copies of tax returns indicate Mr. Goss filed as a sole proprietorship and paid the help he hired in his painting business \$9,066 in 1995 and \$18,625 in 1996. Because he believes those whom he hires are subcontractors, he does not have workers compensation insurance.

CONCLUSIONS OF LAW

The Administrative Law Judge found that Mr. Kelley was an employee of Mr. Goss rather than an independent contractor. The Appeals Board agrees with that conclusion.

The Judge also found that Mr. Kelley failed to prove Mr. Goss had or reasonably estimated a \$20,000 payroll as required by K.S.A. 1997 Supp. 44-505 before the Workers Compensation Act is applicable. The Appeals Board also agrees with that conclusion.

The preliminary hearing orders should be affirmed.

WHEREFORE, the Appeals Board finds and orders that the preliminary hearing orders dated January 30, 1998, and February 11, 1998, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby are, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Michael R. Wallace, Shawnee Mission, KS
J. Paul Maurin, III, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director